

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-70371

DATE: JAN 22 1976

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MATTER OF: Jury Fees - Postal Service Employees

DIGEST:

1. Although under subsection (e) added to 5 U.S.C. § 2105 by Postal Reorganization Act, Pub. L. 91-375, Postal Service employees are no longer within purview of title 5, U.S. Code, Postal Service employees are still subject to provisions of 5 U.S.C. § 5537 (1970), continued through Postal Regulations, and may not be paid jury fees authorized by 28 U.S.C. § 1871 (1970).
2. Laws, etc., relating to employment terms, conditions and benefits of employees of former Post Office which Postal Service has continued in effect for its employees through regulations issued under 39 U.S.C. § 1005(f), added by Postal Reorganization Act, Pub. L. 91-375, are for implementation and determination by Postal Service.

The Director, Administrative Office of the United States Courts, has requested our decision whether employees of the United States Postal Service who serve as jurors in the Federal district courts are entitled to payment of the attendance fees provided by law for jury duty. At the present time, Clerks of the Courts are not authorizing payment of the attendance fees to Postal employees on the basis of the proscription of 5 U.S.C. § 5537 (1970).

The jury fee statute, 28 U.S.C. § 1871 (1970), provides that, except as otherwise provided by law, grand and petit jurors in the Federal district courts or before United States Commissioners generally are to receive a jury attendance fee in the amount of \$20 per day. 5 U.S.C. § 5537 (1970) provides in pertinent part that an employee as defined by 5 U.S.C. § 2105 (1970) may not receive the jury service fee provided for in 28 U.S.C. § 1871 (1970). The threshold question then is whether Postal Service employees are "employees" within the meaning of 5 U.S.C. § 2105 (1970) so as to make 5 U.S.C. § 5537, supra, applicable.

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The Postal Reorganization Act of August 12, 1970, Public Law 91-375, enacted revised title 39, United States Code, which established the United States Postal Service as an independent establishment within the Executive Branch of the Government. Section 6(c)(4) of the Act added to section 2105 of title 5, United States Code, a new subsection (e) which provides as follows:

"(e) Except as otherwise provided by law, an employee of the United States Postal Service or of the Postal Rate Commission is deemed not an employee for purposes of this title."

Thus, except as otherwise provided by law, employees of the Postal Service are outside the purview of title 5. See 51 Comp. Gen. 395 (1972).

With respect to other provisions of law, an examination of the legislative history of the Postal Reorganization Act shows a legislative intent to free the Postal Service from many of the restrictive statutes applicable generally to Government agencies. Section 410(a) of the Act (39 U. S. C. § 410(a)) explicitly carries out this intent:

"(a) Except as provided by subsection (b) of this section, and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service." (Emphasis added.)

In those instances in which Congress intended that other laws should apply to the Postal Service, they are specifically made applicable under section 410(b) of the Act, 39 U. S. C. § 410(b). The jury fee provision, 5 U. S. C. § 5537, *supra*, is not among those provisions made applicable to the Postal Service under section 410(b) of the Act.

Only a limited number of other provisions need be considered. Section 1001(d) of title 39, United States Code, as added by Public

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Law 91-375, provides for exceptions to applicability of dual payment laws to Postal Service employees as follows:

"(d) Notwithstanding section 5533, 5535 or 5536 of title 5, or any other provision of law, any officer or employee of the Government of the United States is eligible to serve and receive pay concurrently as an officer or employee of the Postal Service (other than as a member of the Board of the Postal Rate Commission) and as an officer or employee of any other department, agency, or establishment of the Government of the United States." (Emphasis added.)

The Director suggests that the omission of section 5537 of title 5 from among the sections specifically cited in this provision more than implies its continued applicability to the Postal Service. However, the omission of that section has no particular significance since it is not a dual compensation provision, as are the other sections cited.

The Director also contends that the new section 1005(f) of title 39, added by Public Law 91-375, and the substantially similar corresponding provision in the Postal Service Regulations, 39 C.F.R. § 211.4(c) (1974), suggest that 5 U.S.C. § 5537, supra, remains applicable to the Postal Service. Section 1005(f) provides in part as follows:

"(f) Compensation, benefits, and other terms and conditions of employment in effect immediately prior to the effective date of this section, whether provided by statute or by rules and regulations of the former Post Office Department or the executive branch of the Government of the United States, shall continue to apply to officers and employees of the Postal Service, until changed by the Postal Service in accordance with this chapter * * * and chapter 12 of this title. * * *"

This section provided for continuity in employment benefits and conditions during the transition from the Post Office Department to the Postal Service. The language of the corresponding regulation, supra, extends to Postal Service employees the applicability

of all laws and regulations not inconsistent with the Act, Postal Service Regulations or collective bargaining agreements which applied to Post Office employees prior to the effective date of the Act.

We are of the opinion that the Director is correct in his assertion that the applicability of 5 U. S. C. § 5537, supra, to Postal Service employees was continued under this section through incorporation in the Postal Service Regulations. 39 C. F. R. § 211.4(c), supra, provides as follows:

"(c) Continuation of Other Laws and Regulations as Postal Regulations. Except as they may be inconsistent with the provisions of the Postal Reorganization Act, with other regulations adopted by the Postal Service, or with a collective bargaining agreement under the Postal Reorganization Act, all regulations of Federal agencies other than the Postal Service or Post Office Department and all laws other than provisions of revised Title 39, United States Code, or provisions of other laws made applicable to the Postal Service by revised Title 39, United States Code, dealing with officers and employees applicable to postal officers and employees immediately prior to the commencement of operations of the Postal Service, continue in effect as regulations of the Postal Service. Any regulation or law the applicability of which is continued by paragraphs (a)-(c) of this section which requires any action by any agency other than the Postal Service or Post Office Department shall be deemed to require such action by the Postal Service, unless by agreement with the Postal Service the other agency involved consents to the continuation of its action."

Furthermore, we are not aware of any regulation which either excludes 5 U. S. C. § 5537, supra, from the coverage of this section or otherwise specifically terminates its continued applicability to Postal Service employees.

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More significant in this context, however, is the recognition by the statute of the authority of the Postal Service under the Act to modify, terminate, or otherwise alter the terms or applicability of the provisions continued under this section. We are of the opinion, therefore, that although applicability of the jury fee provision of 5 U.S.C. § 5537, supra, has been continued through the medium of the Postal Service regulations, its terms and tenure are subject to modification or termination by the Postal Service.

In view of the foregoing, we conclude that jury service fees may not be authorized for payment to Postal Service employees who perform jury service until such time as the Postal Service amends its regulations to make section 5537 of title 5, United States Code, inapplicable to it.

R.F.KELLER

Comptroller General
of the United States

~~Deputy~~